

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DONNIE F. WILLIAMS**  
Claimant

VS.

**INTERNATIONAL PAPER COMPANY**  
Respondent  
Self-Insured

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Docket No. 172,242

**ORDER**

On the 20th day of June, 1995, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Special Administrative Law Judge William F. Morrissey on February 2, 1995, came regularly on for oral argument by telephone conference.

**APPEARANCES**

Claimant appeared by and through his attorney William L. Phalen of Pittsburg, Kansas. Respondent appeared by and through its attorney Frederick J. Greenbaum of Kansas City, Kansas. There were no other appearances.

**RECORD**

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

**STIPULATIONS**

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

What is the nature and extent of claimant's injury and or disability?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant was a B operator for respondent, a job which required repetitive hand motions. He had been working on this job for approximately four (4) years when he began developing numbness in his fingers and problems in gripping. Claimant was referred to Dr. Roger Hood, a local orthopedic surgeon, for treatment. Dr. Hood first examined claimant on December 8, 1992 finding a positive Tinel's and Finkelstein's on each side with no sensory deficits, no weakness and good strength. He felt claimant might have tenosynovitis in each wrist. X-rays were normal.

Claimant was then referred to Dr. Al-Shathir in Joplin for EMGs, which proved to be normal. Dr. Hood assessed claimant a five percent (5%) functional impairment for each wrist which, when converted, equates to a six percent (6%) whole body impairment. He diagnosed claimant as having synovitis. The lack of findings on the EMGs indicated claimant did not have carpal tunnel syndrome. Dr. Hood, in his August 12, 1993, letter to Doug Lindahl, advised that claimant's symptoms were out of proportion to the objective findings and, because of that, there was no way to realistically place limits upon the claimant.

Claimant was referred to Dr. Vito Carabetta, a physical medicine and rehab specialist, by his attorney. Dr. Carabetta saw claimant August 13, 1993. At that time Dr. Carabetta found normal range of motion in the claimant's upper extremities with tenderness in the wrist area radiating into the side of the hand. Phalen's and Tinel's tests were normal with claimant's Finkelstein's test being mildly positive on either side. All other aspects of the testing were normal or negative. Dr. Carabetta found no loss of range of motion and, based upon subjective complaints only, assessed claimant a three percent (3%) functional impairment to the right upper extremity and a two percent (2%) functional impairment to the left upper extremity which, when converted, equates to a five percent (5%) whole body functional impairment. He placed temporary restrictions upon the claimant but felt claimant needed no permanent restrictions. He opined that claimant's condition was quite mild and further indicated that claimant's findings were not consistent with the findings he sees in most people he treats for bilateral tendinitis.

Claimant was referred to Dr. Ernest Schlachter, a general practitioner in Wichita, Kansas, for an independent medical exam on December 27, 1993. The date of Dr. Schlachter's exam is significant in that claimant terminated his employment with respondent May 25, 1993. Dr. Schlachter did not have the opportunity to examine claimant until some seven (7) months after claimant's last day worked with respondent. Dr. Schlachter found pain in both wrists with weakness of grip bilaterally. Claimant had tingling and numbness in the little and ring fingers of both hands, with a positive Tinel's at the elbow on the right and positive Tinel's at the wrists bilaterally. His Phalen's and reverse Phalen's were negative with his Finkelstein's also being negative. Grip strength was seventy (70) on the right and ninety (90) on the left. Dr. Schlachter felt claimant had a medial epicondyle of both elbows as well as overuse syndrome in both upper extremities and tendinitis in the wrists. He also felt claimant might have mild early carpal tunnel syndrome. The X-rays, nerve conduction study and EMGs previously done on claimant were all normal.

Dr. Schlachter rated claimant at five percent (5%) to each upper extremity which, when combined, equates to a six percent (6%) whole body functional impairment. Dr. Schlachter placed repetitive restrictions on claimant of no repetitive pushing, pulling, twisting or grasping motions with either hand or arm with repetitive meaning no more than thirty (30) times per hour. He also advised claimant avoid lifting more than fifteen (15) pounds with either hand or arm repetitively and no single lifts of more than twenty (20) pounds with either hand or arm. Claimant should also avoid vibratory tools and working in cold environments. He also felt claimant's size, with claimant being five foot, ten inches (5'10") tall and weighing three hundred fifty-one and two-fifths (351.4) pounds would work against him.

Claimant was referred to Doug Lindahl, a vocational rehabilitation counselor, for testing and a possible assessment. After reviewing the medical and conferring with claimant Mr. Lindahl recommended a two (2) year program at Fort Scott Community College as a Waste Water Treatment Plant Operator and Water Treatment Plant Operator. Claimant expressed a desire to go into this field and proceeded to preliminary hearing in order to obtain the Court's permission to proceed with this training. Mr. Lindahl felt that, should claimant complete this training, he would be capable of earning wages anywhere from \$7.00 to \$10.00 per hour, which would be a comparable wage to that being paid to claimant at the time he worked with respondent. The plan was reviewed and authorized by Mark Convoy of the Kansas Division of Workers Compensation. Mr. Convoy felt this job was within the restrictions set forth by Dr. Schlachter.

The evidence in the file indicates that, after proceeding to preliminary hearing and obtaining the Court's blessing to proceed through vocational rehabilitation training claimant did not follow through with the vocational training even though it was within his restrictions and would have returned him to comparable wage.

In proceedings under the Workers Compensation Act the burden of proof shall be upon the claimant to establish his right to an award of compensation by proving the various conditions upon which his right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g); Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

In reviewing the medical in the file the Appeals Board finds the medical reports of Dr. Hood and Dr. Carabetta to be more credible in dealing with claimant's functional limitations. Dr. Carabetta, chosen by the claimant's own attorney, felt claimant had no restrictions and found relatively little from an objective standpoint to justify claimant's ongoing complaints. Dr. Hood in his letter to Doug Lindahl advised that claimant's symptomatology was out of proportion to the findings and stated he could not realistically place limits upon claimant due to this symptomatology problem.

Only Dr. Schlachter placed significant restrictions upon claimant. It should be noted that the findings from Dr. Schlachter's examination differ significantly from those of Dr. Carabetta and Dr. Hood. It is even more significant that this evaluation took place seven (7) months after claimant's termination of employment with respondent and also several months after his examinations with Dr. Hood and Dr. Carabetta. K.S.A. 1992 Supp. 44-510e(a) defines functional impairment as:

"... the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence."

The Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that he is entitled to any additional impairment beyond his functional impairment. The medical records of Dr. Carabetta indicate claimant would be capable of returning to work with respondent with no restrictions. The medical records of Dr. Hood indicated difficulty in placing appropriate restrictions upon claimant due to the symptomatology being out of proportion to the findings. Both Dr. Hood and Dr. Schlachter assessed claimant a six percent (6%) whole body functional impairment with Dr. Carabetta opining claimant suffered a five percent (5%) functional impairment to the body as a whole. The Appeals Board finds claimant is entitled to a six percent (6%) whole body functional impairment as a result of the injuries suffered with respondent on the dates alleged.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated February 2, 1995, shall be and is modified and claimant, Donnie F. Williams, is granted an award against the respondent, International Paper Company, a qualified self-insured, for an accidental injury occurring as a series of accidents through May 25, 1993, and based upon an average weekly wage of \$341.74, for 34 weeks temporary total disability compensation at the rate of \$227.84 per week totaling \$7,746.56, followed thereafter by 381 weeks permanent partial general body disability at the rate of \$13.67 per week in the sum of \$5,208.27 for a total award of \$12,954.83.

As of August 4, 1995, claimant would be entitled to 34 weeks temporary total disability compensation at the rate of \$227.84 per week in the sum of \$7,746.56 followed thereafter by 80.57 weeks permanent partial disability compensation at the rate of \$13.67 per week in the sum of \$1,101.39 for a sub-total of \$8,847.95 to paid in one lump sum minus any amounts previously paid. Thereafter, claimant would be entitled to 300.43 weeks permanent partial general body disability at the rate of \$13.67 per week in the sum of \$4,106.88 until fully paid or until further order of the Director.

Future medical benefits are awarded upon proper application to and approval by the Director.

Unauthorized medical in the amount of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

Claimant's attorney fee contract is hereby approved insofar as it is not in contravention to K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

William F. Morrissey	
Special Administrative Law Judge	\$150.00

Karen Starkey	
Transcript of Preliminary Hearing	\$135.00
Martin D. Delmont	
Transcript of Regular Hearing	\$ 83.95
Patricia K. Smith	
Deposition of Donnie F. Williams	\$149.90
Deposition of Karen Sherwood	\$ 74.95
Deposition of Doug Lindahl	\$137.85
Deposition of Gary Weimholt	\$216.70
Barber & Associates	
Deposition of Ernest R. Schlachter, M.D.	\$155.20
Hostetler & Associates	
Deposition of Vito J. Carabetta, M.D.	\$139.65
Deposition of Roger W. Hood, M.D.	\$222.55

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: William L. Phalen, Pittsburg, Kansas  
John I. O'Connor, Pittsburg, Kansas  
Frederick J. Greenbaum, Kansas City, Kansas  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director